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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 336.

J. DU PRATT WHITE, FRANKLIN W. HOPKINS, EDWARD J. PARTRIDGE, GEORGE W. PERKINS, JR., FREDERICK C. SUTRO, GEORGE T. SMITH, WILLIAM CHILDS, W. AVERELL HARRIMAN, CHARLES W. BAKER and FREDERICK H. OSBORN, constituting the Board of Commissioners of the Palisades Interstate Park, HAMILTON WARD, as Attorney General of the State of New York, and ALEXANDER MACDONALD, as Commissioner of the Conservation Department of the State of New York,

Appellants,

against

SPARKILL REALTY CORPORATION and STANDARD TRAP ROCK CORPORATION,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX TO BRIEF FOR APPELLANTS.

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APPENDIX.

Judicial Code

Section 266

(U. S. C. A., §380)

Alleged unconstitutionality of State statutes; appeal to Supreme Court. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss

or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit. (June 18, 1910, c. 309, §17, 36 Stat., 557; Mar. 3, 1911, c. 231, §266, 36 Stat., 1162; Mar. 4, 1913, c. 160, 37 Stat., 1013; Feb. 13, 1925, c. 229, §1, 43 Stat., 938.)

CONSTITUTION OF STATE OF NEW YORK.

Article I, §6:

No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the Legislature), unless on presentment or indictment of a grand jury, and in any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

Article I, §7:

When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by the Supreme Court with or without a jury, but not with a referee, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. The use of property for the drainage of swamp or agricultural lands

is declared to be a public use and general laws may be passed permitting the owners or occupants of swamp or agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions on making just compensation, and such compensation together with the cost of such drainage may be assessed, wholly or partly, against any property benefited thereby; but no special laws shall be enacted for such purposes.

The Legislature may authorize cities and counties to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating parks, public places, highways or streets; provided, however, that the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street. After so much of the land and property has been appropriated for such park, public place, highway or street as is needed therefor, the remainder may be sold or leased.

Article III, §19.

The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

Article III, §21:

No money shall ever be paid out of the treasury of this State or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly

specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

Article VII, §4:

Except the debts specified in sections two and three of this article, no debt shall be hereafter contracted by or in behalf of this state, unless such debt shall be authorized by law, for some single work or object, to be distinctly specified therein. On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass and ought the same to receive the sanction of the people?" No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election nor shall it be submitted to be voted on within three months after its passage nor at any general election when any other law, or any bill shall be submitted to be voted for or against. The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law.

Except the debts specified in sections two and three of this article, all debts contracted by the state after January first, nineteen hundred and twenty, pursuant to an authorization therefor, heretofore or hereafter made and each portion of any such debt from time to time so contracted irrespective of the terms of such authorization, shall be paid in equal annual instalments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than fifty years, after such debt or portion thereof shall have been

contracted. No such debt hereafter authorized shall be contracted for a period longer than that of the probable life of the work or object for which the debt is to be contracted, to be determined by general laws, which determination shall be conclusive.

The legislature may from time to time alter the rate of interest to be paid upon any state debt which has been or may be authorized pursuant to the provisions of this section or upon any part of such debt, provided, however, that the rate of interest shall not be altered upon any part of such debt or upon any bond or other evidence thereof which has been or shall be created or issued before such alteration.

The money arising from any loan creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability, and for no other purpose whatever.

PALISADES INTERSTATE PARK ACT.

Chapter 170 of the Laws of 1900 Including Amendments[1] Prior To Its Re-enactment by L., 1928, Chapter 242.

AN ACT to provide for the selection, location, appropriation and management of certain lands along the Palisades of the Hudson River for an Interstate Park and thereby to preserve the scenery of the Palisades.

Became a law, March 21, 1900, with the approval of the Governor. Passed, three-fifths being present.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

SECTION 1. Within thirty days after the going into effect of this act there shall be appointed by the governor of this state, by and with the consent of the senate, ten commissioners, five of whom shall be citizens and residents of the state of New York, who shall constitute and are hereby appointed and constituted a board of commissioners by the name and style of "commissioners of the Palisades Interstate Park." Of the commissioners first appointed under the provisions of this act, the terms of two (one of whom shall be a resident of this state) shall expire each year until the terms of all have expired;

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[1]L., 1906, ch. 691;
L., 1910, ch. 361;
L., 1914, ch. 15;
L., 1915, ch. 562;
L., 1917, chs. 168, 251;
L., 1919, ch. 6;
L., 1920, ch. 283;
L., 1922, ch. 79;
L., 1924, ch. 354.

and the said commissioner first appointed shall be appointed and hold office respectively for the term of one, two, three, four and five years, as indicated and fixed in their respective commissions and until others are appointed in their places, and all such commissioners, after the first appointment shall be appointed by the governor and hold office for the full term of five years and until others shall be appointed in their places; vacancies in the commission caused by death, resignation or refusal to act, or removal from the state shall be filled by the governor by appointment for the unexpired term only. No member of said board shall receive any compensation for his services as commissioner, but each commissioner shall be entitled to receive his actual disbursements for his expenses in performing the duties of his office.

§2. *Powers; officers and employees; facilities; office.* Such board of commissioners, and their successors, are hereby created a body politic, with power to sue and be sued, to use a common seal, and to make and adopt by-laws to regulate its proceedings. Such board shall annually choose from among its members a president, a vice-president, treasurer and secretary and appoint such other officers and such other employees, including patrolmen, as it may deem necessary to carry out the purpose of this act, and may employ counsel. The patrolmen so appointed shall be provided with uniforms by the board of commissioners and shall have, within the limits of the property of the Palisades Interstate park, all of the powers, duties and liabilities of constables of towns in the execution of criminal process; and criminal process issued by a police justice or magistrate of a village comprising or containing territory included in such park may be directed to and executed by any such patrolman, notwithstanding the provisions of any local or special act relating to any such village. The board of commission-

ers may also determine the duties and compensation of such appointees and remove them at pleasure, and make all reasonable rules and regulations respecting the same. The board of commissioners may also erect and operate elevators and escalators at such places in the park as the board may deem necessary or expedient and may provide and operate such other facilities, including any and all means of transportation to, from or in said park, for the use and enjoyment of such park by the public and for increasing the accessibility to the park of such public as the board may deem to be necessary or expedient, and the said board may also provide, at its discretion, by a proper rule or regulation, for the terms upon which, and the manner in which, all such facilities may be used. Such board shall have and maintain a suitable office, where its maps, plans, documents, records and accounts shall be kept, subject to public inspection, at such times and under such reasonable regulations as the board shall determine.

§3. The first meeting of such board of commissioners at which it shall choose its officers, as hereinbefore provided, shall be held within thirty days from the going into effect of this act, at such time and place as shall be agreed upon and notified to the members of the board of commissioners by the secretary of state.

§4. The board of commissioners shall have power to and shall, as soon as may be after its organization, proceed to select and locate such lands lying between the top of the steep edge of the Palisades and the exterior bulkhead line established by law upon the Hudson River, together with such separate parcels of unimproved lands lying on the front of the top of the Palisades from the New Jersey state line on the south to Piermont creek, near Piermont in Rockland county, on the north, as may in their opinion be proper and necessary to be reserved

for the purpose of establishing a state park and thereby preserving the scenic beauty of the Palisades; and said board of commissioners shall have the further power, to, and shall, as soon as said board shall deem it feasible and advisable, proceed to select and locate such mountainous lands along and adjacent to the west bank of the Hudson river in Rockland and Orange counties, north of Piermont creek and south of the city of Newburgh, and other lands to the west thereof and extending into the Ramapo mountains, except the land comprised in the United States government reservation at West Point and the land comprised in the state reservation at Stony Point, and other lands now owned by the state of New York, as may in the opinion of said board of commissioners, be proper and necessary for the purpose of extending the limits of said state park and thereby preserving the scenic beauty of or securing to the use of the public for park purposes the mountainous lands along and adjacent to the west bank of the Hudson river in Rockland and Orange counties and other lands to the west thereof and extending into the Ramapo mountains north of the Palisades.

§5. *Acquisition of lands; maintenance of park.* The said board of commissioners shall have the power to acquire, maintain and make available for use as a public park, the lands located as aforesaid, and for this purpose shall have power to take in fee or otherwise, by purchase, gift, devise or eminent domain, the said lands, or any of them and any rights, interests and easements therein, and to receive by gift, contribution or bequest moneys to be used in acquiring or improving the said lands or any of them; said board shall also have power to acquire for park purposes by gift or devise, and also by purchase when funds are hereafter made available therefor by the legislature, but not by eminent domain, any lands or rights in lands outside of the areas defined in section four; deeds of conveyance for such lands shall

be made to said board of commissioners by its corporate name, and it shall be the duty of said board to preserve, care for, lay out and improve the said park and to make rules for the use and government of the same, and of such parts of state, county and other public highways as lie along or within the boundaries of such park; a violation of any of such rules shall constitute a misdemeanor and shall be punishable by a fine of not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment, provided, however, that any rules which may apply to any part of any state or county highway shall be subject to the approval of the state commission of highways; said board shall have power also to lay out, construct and maintain roads, pathways and boulevards upon, across and over the said park, to lay out, construct and maintain roads between and connecting any separate portions of said park, and for this purpose to acquire rights of way upon and across any intervening lands, and to lay out, construct and maintain roads and ways connecting the roads and ways within said park with other public roads outside of and adjacent thereto. The said commissioners shall have the power, by proper deed executed in their corporate name, to sell and convey the right, title and interest of the said commissioners and of the people of the state of New York in and to any or all lands in the town of Clarkstown, county of Rockland, previously acquired by them which lie west of the crest of the mountainous lands bordering on the Hudson river in said county and which the said commissioners decide are not necessary or desirable for park purposes. All moneys received from the sale of such lands shall be deposited with the state treasurer and, upon appropriation by the legislature, shall be devoted to the acquisition of other lands for the purposes of said park. The said commissioners may also sell all personal property, supplies, chattels, material and profits a prendre which they decide to be not necessary or de-

sirable for the uses and purposes of the park. All moneys received from the sale of such personal property, supplies, chattels, material and profits a prendre and from the operation of the park shall, notwithstanding the provisions of section thirty-seven of the state finance law, be expended by said commissioners for the extension, development, operation and maintenance of such park in such manner as the commissioners may determine. The amounts received or expended under this section, as amended, shall be reported annually to the state comptroller. The said board of commissioners shall in laying out and maintaining said park have regard to the laying out and maintenance of such park as may be established by the state of New Jersey along the Palisades and Hudson river, and shall, so far as may be, lay out and maintain said park in such manner that it, together with such park as may be established by the state of New Jersey, shall form a continuous park, the intention of this act being to provide, in conjunction with the state of New Jersey, for the establishing of a park along the entire front of the Palisades from Fort Lee, in New Jersey, to the termination thereof in this state, and along the front of the mountain lands extending along the west bank of the Hudson river from the northerly limit of the Palisades to the state reservation at Stony Point and in the mountainous lands along and adjacent to the west bank of the Hudson river in Rockland and Orange counties south of the city of Newburgh and in other lands to the west thereof and extending into the Ramapo mountains and in such other lands as may be acquired by the said board of commissioners except the land comprised in the said United States government reservation at West Point and the land comprised in the said state reservation at Stony Point and thereby preserving the scenic beauty of the Palisades and of said lands or securing the use thereof to the public for park purposes.

§6. *Map; appraisal of damages.* Before any proceeding shall be had or taken for acquiring the title by eminent domain to any of the land located as aforesaid, the said commissioners shall cause to be made, by such engineer and surveyor as they shall select, a map of the lands and rights in lands which they shall determine to take, showing the boundaries of the individual pieces of land embraced therein, and the names of the owners or reputed owners thereof, as nearly as the same can be ascertained, and shall at the same time proceed to investigate, ascertain and appraise as nearly as may be the full and fair value of the lands shown on the said map. A copy of which map certified by a majority of said commissioners, together with a report of their proceedings in the matter of said estimate and appraisal and the results thereof shall be filed in the office of the secretary of state and in the office of the clerk of the county in which the lands and rights in lands so to be taken and acquired are situated. The said commissioners shall also file in like manner any modifications or amendments which they may from time to time desire to make in said map, and the said map shall thereafter be deemed to be altered in accordance with such modifications and the same proceedings may be had thereafter as are herein provided for in relation to the lands shown on said map as originally filed.

§7. *Notice of intention to take.* After the filing of the said map as above required, the said commissioners shall from time to time and at such times as they may deem advisable, publish for four successive weeks in two newspapers printed and published in the county in which the lands and rights in lands so to be taken and acquired are situated, a notice declaring that the commissioners of the Palisades interstate park intend to take and appropriate such of the lands and rights in lands shown on the said map as are described in such notice, and acquire title

thereto and hold the same in trust for the people of the state of New York, and that the said commissioners intend to apply to the Supreme Court in the ninth judicial district, on a day specified for the appointment of three freeholders, residents of the state of New York, to act as commissioners of appraisement, to ascertain and report the just compensation to be paid to person or persons or corporation owning or having an interest in said property.

§8. Upon the day designated in the said notice or some other day to be named by the said court, the said court shall hear the application of the said commissioners, and shall appoint three disinterested persons, freeholders, and residents of the state of New York commissioners of appraisement for the purpose aforesaid. And in case any commissioner of appraisement shall decline to serve, the said court may on application of the said board of commissioners of the Palisades Interstate Park, upon notice of such vacancy and application to be published in a newspaper in the county in which the lands or rights in lands so to be taken and acquired are situated, for ten successive week days appoint another in his place.

§9. The commissioners of appraisement so appointed shall, before they enter upon their duties, take and subscribe an oath, or affirmation, to be administered by some person authorized to administer oaths, faithfully and impartially to execute their duties according to the best of their ability. They shall cause to be published for five successive week days, in a paper printed and published in the county in which the lands or rights in lands so to be taken and acquired are situated, a notice of their appointment, containing a brief statement of the purposes for which they have been appointed, and requiring all parties and persons interested in the lands and rights to be taken or acquired by said board of commissioners

of Palisades interstate park, pursuant to said application and the order of their appointment, and having any claim or demand on account thereof, to present the same to them duly verified, with such affidavit or other proof as the owner or claimants may desire, within thirty days after the date of the first publication of said notice and stating a time and place after the expiration of said thirty days when the said parties and persons shall be heard in relation thereto by said commissioners of appraisement. At the time and place fixed by said notice, or at any such further or other times and places as said commissioners may appoint, said commissioners shall hear such owners and examine the proof of such claimant or claimants, or such additional proof and allegations as may then be offered by such owners or on behalf of said board of commissioners of the Palisades interstate park. They shall give notice of the time and place of their meeting to view the said property, hereinafter provided for, by publishing the same in a newspaper printed and published in the county in which the lands or rights in lands so to be taken and acquired are situated, for twelve successive week days.

§10. *Duties of appraisers; report.* The commissioners of appraisement shall together view such property and shall receive any legal evidence as to the compensation that should be made therefor, and may adjourn from time to time. They shall ascertain and award to the respective owners of the property to be taken, and to all persons and corporations interested therein, such compensation therefor as in their opinion shall be just and proper and in fixing the amount of such compensation, said commissioners shall not make any allowance or deduction on account of any real or supposed benefit which the parties interested may derive from the said park or improvement for which said lands are to be taken. The report of the commissioners of appraisement, signed by a majority of

said commissioners, shall be filed in the office of the clerk of the county in which the lands or rights in lands so to be taken and acquired are situated, as soon as completed, and said report shall be made and filed within six months from the time of their appointment; provided, however, that the time for the filing of said report may at any time be extended by a special term of the supreme court sitting in the ninth judicial district upon application of any person interested. Their oaths of qualifications and their minutes of the testimony taken by them, if any, shall be attached to and filed with their said report and form a part thereof.

§11. *Notice of application to confirm report.* After the report of the said commissioners of appraisement shall be so filed, the board of commissioners of the Palisades interstate park shall give notice, by publishing the same in ten successive numbers of any newspapers printed and published in the county in which the lands or rights in lands so to be taken and acquired are situated, that they will on a day to be specified in said notice apply to the said supreme court, for an order confirming the report, and on the day so appointed, the said court, upon being furnished with proof of the due publication of said notice as above provided, shall confirm such report and make an order containing a recital of the substance of the proceedings in the matter of the appraisement and a description of the real estate appraised, for which compensation is to be made, and the amount of compensation to be made in each case, and shall also direct to whom the money is to be paid. The said court shall also tax and allow such costs, fees and expenses to the commissioners of appraisement and other persons performing any legal duty in the premises as it shall think equitable and right, which shall be paid by said board of commissioners. Provided, however, that the total fees to all attorneys for property owners in any one proceeding shall not ex-

ceed five per centum of the total of all of the awards and that no one property owner shall be allowed for attorney's fees more than the sum of one tnousand dollars. Provided, further, that no attorney shall be allowed attorney's fees unless the attorney claiming the same files an affidavit stating that he has received no compensation from the owner in such proceeding and the owner is under no contract to pay him any fee. Provided, further, that no one owner shall be allowed fees for witnesses as to value at a greater rate than seven dollars per day for three such witnesses. And provided further that the fees allowed the commissioners of appraisement shall not exceed forty dollars per day for each commissioner.

§12. A certified copy of the order so to be made as aforesaid shall be recorded at full length in the office of the clerk of the county in which the lands or rights in lands so to be taken and acquired are situated and also in the office of the secretary of state.

§13. *Appeal.* Within twenty days after the confirmation of the report of the commissioners of appraisement, as provided for in the eleventh section of this act, any party may appeal on giving notice as provided in the code of civil procedure to the appellate division of the supreme court in the second department, from the appraisal and report of the commissioners. Such appeal shall be heard by the said appellate division at the next thereafter ensuing term thereof, on due notice thereof being given according to the rules and practice of said court. On hearing of such appeal the court may direct a new appraisement before the same or new commissioners to be by it appointed, in its discretion. In case the court shall order a new appraisement the appraisers appointed to make the same shall qualify and proceed in all respects as provided in sections nine and ten hereof, and such second appraisement shall be final and conclusive upon both parties.

§14. In case there should be conflicting claimants for any of the money awarded to be paid for any of the said lands or rights in lands appraised as aforesaid, or in case the person entitled to receive any money awarded to be paid for any of the said lands or rights in lands so appraised cannot be ascertained, or is absent from the state or under any legal incapacity that disqualifies him or them from receiving legal payment of the money awarded, then it shall be the duty of said commissioners of the Palisades Interstate Park upon making payment for the lands taken and appraised as aforesaid, to pay the amounts awarded to said person or persons to the clerk of the county in which the lands or rights in lands so taken and acquired are situated who shall receive the same, and pay over the same as he may be ordered by the said supreme court, which upon application made thereto shall determine who is entitled to the same, and direct to whom the same shall be paid, and may in its discretion, order a reference to ascertain the facts upon which said determination and order are to be made. Any and all such payments to said clerk shall be equivalent to payment to the parties entitled thereto, and shall operate to transfer the title of the said lands or rights in lands to the said board of commissioners, as if payment had been made directly to the parties entitled thereof, and shall release the said board of commissioners from all claim therefor.

§15. If, at any time after an attempt to acquire title by compensation as aforesaid, it shall be found that the title attempted to be acquired is defective, the said commissioners of the Palisades Interstate Park shall proceed anew to acquire or perfect such title, in the manner hereinbefore set forth, and as if no appraisement had been made, and the said supreme court shall have power at any time to amend any defect or informality in any

of the proceedings to acquire title to the said lands, or rights in lands, or any of them, as may be necessary, and also to appoint other commissioners of appraisement in place of any who may die or refuse or neglect to serve or be incapable of serving, upon like notice, as required by section eight of this act.

§16. The said commissioners of the Palisades Interstate Park shall not acquire the title to or enter into possession of any of the said appraised premises until the amount awarded for the same shall have been paid to the owner or owners thereof or to the county clerk as aforesaid, but such payment shall operate to transfer the title to the said commissioners.

§17. *Report of commissioners; acquisition of lands to be made within eighteen months.* After the proceedings hereinbefore provided for, for the purpose of acquiring title by the said board of commissioners to the said lands or any of them shall have been concluded, the said board of commissioners of the Palisades interstate park, shall report such proceedings, and all other action by them taken, together with the amount awarded by the said commissioners of appraisement, to the legislature of this state. If said board of commissioners shall not complete the acquisition of any of said lands or rights described in any said notice, to be published as aforesaid, within eighteen months after the first publication by them of said notice of application provided for in section seven of this act, any person interested, upon at least eight days' notice in writing to said board of commissioners, may make application to said court for an order discontinuing all proceedings taken by said board of commissioners to acquire by eminent domain the said land or lands, right or rights in which he may be interested, and the court, in its discretion may grant or refuse such application and may, in the order made thereon,

award costs to either party. Provided, however, that such board of commissioners shall have the right at any stage of the proceeding to discontinue the proceeding by an order of the court fixing fees, costs and disbursements to be allowed to land owners as hereinbefore provided.

§18. The sum of ten thousand dollars or as much thereof as may be necessary, payable out of any moneys in the treasury not otherwise appropriated, is hereby appropriated to carry out the provisions of this act. The total amount of the expenditures by said commissioners shall not exceed such sum of ten thousand dollars. Payments from said appropriation shall only be made upon itemized accounts duly verified and in such sums as may be allowed by the comptroller after audit by him.

§19. This act shall take effect June first nineteen hundred.

1928 REVISION OF THE NEW YORK CONSERVATION LAW.

Chapter 242 of the Laws of 1928.

AN ACT to amend the conservation law, generally, and to conform the same to the state departments law, and repealing certain provisions of article eight of the state departments law, and certain other statutes.

Became a law March 5, 1928, with the approval of the Governor. Passed, on message of necessity, three-fifths being present.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The schedule of articles of chapter six hundred and forty-seven of the laws of nineteen hundred and eleven, entitled "An act relating to conservation of land, forests, waters, parks, hydraulic power, fish and game, constituting chapter sixty-five of the consolidated laws," as amended, is hereby amended to read as follows:

Article I. Short title; definitions (§§1-2).
II. Department of conservation (§§3-10).
III. Division of lands and forests (§§50-65).
* * * * *
XVI. Division of parks (§§660-862).
* * * * *

§5. Article four of such chapter as added by chapter four hundred and fifty-one of the laws of nineteen hundred and sixteen, as amended, is hereby renumbered article three and is hereby amended to read as follows:

ARTICLE III.

Division of Lands and Forests.

* * * * *

§50. *Powers and duties of the department relative to lands and forests.* The conservation department shall, for the purpose of carrying out the provisions of this article, have the following powers, duties and authority to be exercised through or by the division of lands and forests:

1. Have the care, custody and control of the several preserves, parks and other state lands described in this article.

2. Have the power to establish, acquire, control and manage other state parks and parkways in the forest preserve counties, and in the counties of Albany, Jefferson, Montgomery, Schenectady and Schoharie, and to acquire lands for such purposes when moneys have been appropriated therefor.

* * * * *

30. Nothing in this chapter shall be construed as extending the jurisdiction of the division of lands and forests over the real or personal property now or hereafter under the control or in the custody of the commissioners of the Palisades interstate park, but said division, subject to the powers of the commissioner, is authorized to cooperate with said commissioners of the Palisades interstate park by the joint employment of wardens, foresters and keepers, for the mutual protection of the lands under their respective jurisdiction and other state commissions and the preservation of the forests thereon and of the fish and game therein.

* * * * *

§59. *Appropriation of real property.* The department shall, with the approval of the governor, have the power and authority to appropriate real property in the manner and under the conditions herein defined:

1. *Purposes:* (a) The department may enter upon and take possession of any lands or waters or both, or of any forests and rights in timber upon such lands, or upon any part, or portion thereof, within the Adirondack or Catskill parks or adjacent thereto, the appropriation of which, in the judgment of said department, shall be necessary for public park purposes, or for the protection and conservation of the lands, forests and waters within the state, and

(b) May enter upon and take possession of any lands or waters or both, within the state that may be necessary, in the judgment of said department, for the purpose of artificial propagation of food and game fish for restocking the public waters of the state.

2. *Description of land.* An accurate description of such property so entered upon and appropriated shall be made by the department, who shall certify under its seal that the description is correct, and shall endorse thereon a notice that the property described therein is appropriated by the people of the State of New York for the purpose described in this section. The original of such description and certificate shall be filed in the office of the secretary of state. The conservation department may make such additional copies of this certificate and description as may be necessary and certify the same.

3. *Service of notice.* The said department shall thereupon cause a duplicate of said description and certificate, with notice of the date of filing thereof in the office of said secretary of state, to be served on the owner or owners of the lands, forests, and rights in timber upon such lands and waters so appropriated; and from the time of such

service the entry upon and appropriation by the people of the state of the property described in such notice shall be deemed complete, and thereupon such property shall become, and be, the property of the people of the state. Such notice shall be conclusive evidence of an entry and appropriation by the state; but the service of such notice shall raise no presumption that the lands, forests, and rights in timber upon such lands described therein are private property.

4. *Manner of service.* Service of the notice and papers provided for under subdivision three must be personal if the person to be served can be found within the state. If the said department shall not be able to serve said notice and papers or to cause the same to be served upon the owner or owners personally within the state, after making an effort so to do which said department shall deem to be reasonable and proper, service may be made by filing said notice and papers in the office of the county clerk of the county wherein the property so appropriated is situated and by causing such notice and papers to be recorded in the books used for recording deeds in the office of said clerk. On the filing of said notice and papers with said clerk, it shall be the duty of said clerk to record same in the books used for recording deeds in the office of said clerk and to index the name of the person or persons to whom said notice is directed as a grantor in an index book to be kept by said clerk.

In case such service is made by filing said notice and papers in the office of the county clerk, any person so served may at any time thereafter file a claim with the court of claims against the state, notwithstanding the two year limitation provided by this article or by the court of claims act, excepting that if the person so served shall be brought in and made a party to any claim or proceeding pending in the court of claims or before a referee having jurisdiction to hear, try or determine a

pending claim, such person so brought in and made a party shall not thereafter file a claim against the state on account of such appropriation, in addition to or in substitution for the claim to which he has been made a party, unless he shall file such additional or substituted claim within three months from the time he is so brought in and made a party.

5. *Description and certificates to be recorded.* If service be personal, the said department shall thereupon cause a copy of such notice and papers, together with an affidavit of due service thereof on such owner or owners, to be filed and recorded in the same manner as provided in subdivision four and it shall be the duty of said clerk to record and index same as provided in subdivision four in case service is other than personal; and the record of such notice, and of such proof of personal service, shall be presumptive evidence of due service thereof.

6. *Adjustment of claims by agreement.* Claims for the value of the property appropriated, and for legal damages caused by any such appropriation, may be adjusted by the department, even though a claim has been filed with the court of claims, if the amount thereof can be agreed upon with the owner or owners thereof. Upon making any such adjustment and agreement the department shall deliver to the comptroller a certificate stating the amount due to said owner on account of such appropriation of his land or other property, and the amount so fixed shall be paid out of the state treasury upon the audit and warrant of the comptroller. If the property was appropriated pursuant to the provisions of chapter five hundred and sixty nine of the laws of nineteen hundred and sixteen and acts supplemental thereto or amendatory thereof, such adjustment shall be subject to the approval of the commissioners of the land office.

7. *Court of claims, jurisdiction of.* Any owner may present to the court of claims a claim for the value of

such land and legal damages within two years after the service of such notice and papers upon him, unless sooner brought in and made a party by such court. If brought in and made a party by such court, he may file an independent claim in respect of such land within three months from the time he is so brought in but not thereafter. If any such claim is not adjusted by agreement, such court shall have jurisdiction to hear and determine such claim and render judgment thereon. Upon filing in the office of said department, and in the office of the comptroller, a certified copy of the judgment of the court of claims, and a certificate of the attorney-general that no appeal from such judgment has been, or will be taken, by the state, or if an appeal has been taken, a certified copy of the final judgment of the appellate court affirming in whole or in part the judgment of the court of claims, the comptroller shall issue his warrant for the payment of the amount due the claimant by such judgment, with interest from the date of the judgment until the thirtieth day after the entry of such final judgment, and such amount shall be paid out of the state treasury.

8. *Court of claims to examine property.* The court of claims, if requested by the claimant or the attorney-general, shall examine the real property affected by the claim of damages for the appropriation thereof and take testimony in relation thereto in the county where such property or a part thereof is situated.

* * * * *

18. *Costs and Disbursements; when offer made.* If an offer is made by said department for the value of land appropriated, or for damages caused by such appropriation, and such offer is not accepted, and the recovery in the court of claims exceeds the offer, the claimant is entitled to costs and disbursements as in an action in the supreme court, which shall be allowed and taxed by the court of claims and included in its judgment. If in such a case the recovery in the court of claims does not exceed

the offer, costs and disbursements to be taxed shall be awarded in favor of the state against the claimant and deducted from the amount awarded to him; or if no amount is awarded, judgment shall be entered in favor of the state against the claimant for such costs and disbursements. If an offer is not accepted, it can not be given in evidence on the trial.

* * * * *

§41. Such chapter is hereby amended by inserting therein a new article, to follow article fifteen, to be article sixteen, to read as follows:

ARTICLE XVI.

DIVISION OF PARKS.

Part 1. Organization of division of parks (§§660-662).

* * * * *

§662. Departmental visitation and control of state parks, parkways, reservations, places of historic or scientific interest and memorials. * * * Real property shall not hereafter be acquired with state moneys by any such commission, commissioners, society, board, trustees, corporation, association or authority by condemnation or appropriation, except with the approval of the conservation commissioner; but this provision shall not apply to such acquisitions made or to be made pursuant to chapter sixteen of the laws of nineteen hundred and twenty-six relating to expenditures of the proceeds of state bonds authorized by chapter six hundred and two of the laws of nineteen hundred and twenty-four, and such chapter shall not be affected or impaired by this article.

* * * * *

PART 9.

Commissioners of the Palisades Interstate Park.

* * * * *

§745. *Organization; terms of commissioners; vacancies.* There shall continue to be in the division of parks in the conservation department a board known as the commissioners of the Palisades interstate park to consist of ten commissioners to be appointed by the governor. At least five of such commissioners shall be citizens and residents of the state of New York and five of them may be residents of the state of New Jersey. The commissioners now in office shall continue in office until the expiration of their respective terms and until their successors shall be appointed and shall have qualified. The term of each commissioner shall be five years. Vacancies in the commission caused by death, resignation or refusal to act or removal from the state shall be filled by the governor by appointment for the unexpired term only. No member of said board shall receive any compensation for his services as commissioner, but each commissioner shall be entitled to receive his actual disbursements for his expenses in performing the duties of his office.

§746. *Powers; officers and employees; facilities; office.* Such board of commissioners, and their successors, shall be continued as a body politic with power to sue and be sued, to use a common seal, and to make and adopt by-laws to regulate its proceedings. Such board shall annually choose from among its members a president, a vice-president, treasurer and secretary and appoint such other officers and employees, including patrolmen, as it may deem necessary to carry out the provisions of this part of this article, and may employ counsel. The patrolmen so appointed shall be provided with uniforms by the board

of commissioners and shall have, within the limits of the property of the Palisades interstate park and all the lands, parks and parkways under the jurisdiction of such commissioners, all of the powers, duties and liabilities of constables of towns in the execution of criminal process; and criminal process issued by a police justice or magistrate of a village comprising or containing territory included in such park may be directed to and executed by any such patrolman, notwithstanding the provisions of any local or special act relating to any such village. The board of commissioners may also determine the duties and compensation of such appointees and remove them at pleasure, and make all reasonable rules and regulations respecting the same. The board of commissioners may also erect and operate elevators and escalators at such places in the park as the board may deem necessary or expedient and may provide and operate such other facilities, including any and all means of transportation to, from or in said park, for the use and enjoyment of such park by the public and for increasing the accessibility to the park of such public as the board may deem to be necessary or expedient, and the said board may also provide, at its discretion, by a proper rule or regulation, for the terms upon which, and the manner in which all such facilities may be used. Such board shall have and maintain a suitable office, where its maps, plans, documents, records and accounts shall be kept, subject to public inspection, at such times and under such reasonable regulations as the board shall determine.

§747. *Power to acquire land for parks.* The board of commissioners shall continue to have power to and shall from time to time proceed to select and locate such lands from the New Jersey state line on the south to Piermont creek, near Piermont in Rockland county, on the north lying between the high-water line of said river and the top of the steep edge of the palisades, or the

crest of the easterly slope of the uplands overlooking said river where the steep palisade rocks are absent or lying on the front of said palisades or uplands, as may in their opinion be proper and necessary to be reserved for the purpose of establishing or extending a state park and thereby preserving the scenic beauty of the palisades and uplands or securing the same to the use of the public for park purposes; and said board of commissioners shall have the further power to, and shall, as soon as said board shall deem it feasible and advisable, proceed to select and locate such mountainous lands along and adjacent to the west bank of the Hudson river in Rockland and Orange counties, north of Piermont creek and south of the city of Newburgh, and other lands to the west thereof and extending into the Ramapo mountains, except the land comprised in the United States government reservation at West Point and the land comprised in the state reservation at Stony Point, and other lands now owned by the state of New York, as may in the opinion of said board of commissioners, be proper and necessary for the purpose of extending the limits of said state park and thereby preserving the scenic beauty of or securing to the use of the public for park purposes the mountainous lands along and adjacent to the west bank of the Hudson river in Rockland and Orange counties and other lands to the west thereof and extending into the Ramapo mountains north of the palisades.

§748. *Acquisition of lands; maintenance of park.* The said board of commissioners shall continue to have the immediate custody, jurisdiction, management and control of all lands, parks or parkways which it now has under its jurisdiction and control or which has been heretofore acquired by it pursuant to law and shall have the power to acquire, maintain and make available for use as a public park, other lands located as aforesaid, and for this purpose shall have power to take in fee or other-

wise, by purchase, gift, devise or eminent domain, the said lands, or any of them and any rights, interests and easements therein, and to receive by gift, contribution or bequest moneys to be used in acquiring or improving the said lands or any of them; said board shall also have power to acquire for park purposes by gift or devise, and also by purchase when funds are hereafter made available therefor by the legislature, but not by eminent domain, any lands or rights in lands outside of the areas defined in section seven hundred and forty-seven hereof; deeds of conveyance for such lands shall be made to said board of commissioners by its corporate name, and it shall be the duty of said board to preserve, care for, lay out and improve the said park and to make rules for the use and government of the same, and of such parts of state, county and other public highways as lie along or within the boundaries of such park; a violation of any of such rules shall constitute a misdemeanor and shall be punishable by a fine of not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment, provided, however, that any rules which may apply to any part of any state or county highway, shall be subject to the approval of the superintendent of public works; said board shall have power also to lay out, construct and maintain roads, pathways and boulevards upon, across and over the said park, to lay out, construct and maintain roads between and connecting any separate portions of said park, and for this purpose to acquire rights of way upon and across any intervening lands, and to lay out, construct and maintain roads and ways connecting the roads and ways within said park with other public roads outside of and adjacent thereto. The said commissioners shall have the power, by proper deed executed in their corporate name, to sell and convey the right, title and interest of the said commissioners and of the people of the state of New York in and to any or all lands in the town

of Clarkstown, county of Rockland, previously acquired by them, which lie west of the crest of the mountainous lands bordering on the Hudson river in said county and which the said commissioners decide are not necessary or desirable for park purposes. All moneys received from the sale of such lands shall be deposited in the state treasury and, upon appropriation by the legislature, shall be devoted to the acquisition of other lands for the purposes of said park. The said commissioners may also sell all personal property, supplies, chattels, material and profits a prendre which they decide to be not necessary or desirable for the uses and purposes of the park. All moneys received from the sale of such personal property, supplies, chattels, material and profits a prendre and from the operation of the park shall, notwithstanding the provisions of section thirty-seven of the state finance law, be expended by said commissioners for the extension, development, operation and maintenance of such park in such manner as the commissioners may determine. The amounts received or expended under this section, as amended, shall be reported annually to the state comptroller. The said board of commissioners shall in laying out and maintaining such park have regard to the laying out and maintenance of such park as may be established by the state of New Jersey along the Palisades and the Hudson river, and shall so far as may be, lay out and maintain said park in such manner that it, together with such park as may be established by the state of New Jersey, shall form a continuous park, the intention of this part of this article being to provide, in conjunction with the state of New Jersey, for the establishing of a park along the entire front of the Palisades from Fort Lee, in Jersey, to the termination thereof in this state, and along the front of the mountain lands or other uplands extending along the west bank of the Hudson river from the northerly limit of the Palisades to the state reservation at Stony point and in the mountainous lands along and adjacent to the west bank

of the Hudson river in Rockland and Orange counties south of the city of Newburgh and in other lands to the west thereof and extending into the Ramapo mountains and in such other lands as may be acquired by the said board of commissioners, except the land comprised in the said United States government reservation at West Point and the land comprised in the said state reservation at Stony Point and thereby preserving the scenic beauty of the Palisades and of said lands or securing the use thereof to the public for park purposes.

§749. Section 6 of Chapter 170 of the Laws of 1900*, see p. 13, supra.

§750. Section 7 of Chapter 170 of the Laws of 1900*, see pp. 13-4, supra.

§751. Section 8 of Chapter 170 of the Laws of 1900*, see p. 14, supra.

§752. Section 9 of Chapter 170 of the Laws of 1900*, see pp. 14-15, supra.

§753. Section 10 of Chapter 170 of the Laws of 1900*, see pp. 15-16, supra.

§754. Section 11 of Chapter 170 of the Laws of 1900*, see pp. 16-17, supra.

§755. Section 12 of Chapter 170 of the Laws of 1900*, see p. 17, supra.

§756. Section 13 of Chapter 170 of the Laws of 1900*, see p. 17, supra.

§757. Section 14 of Chapter 170 of the Laws of 1900*, see p. 18, supra.

§758. Section 15 of Chapter 170 of the Laws of 1900*, see pp. 18-19, supra.

§759. Section 16 of Chapter 170 of the Laws of 1900*, see p. 19, supra.

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*Re-enacted without change.

§760. Report of commissioners, acquisition of lands to be made within eighteen months. After the proceedings hereinbefore provided for, for the purpose of acquiring title by the said board of commissioners to the said lands or any of them shall have been concluded, the said board of commissioners of the Palisades interstate park, shall report such proceedings, and all other action by them taken, together with the amount awarded by the said commissioners of appraisement, to the conservation department. If said board of commissioners shall not complete the acquisition of any of said lands or rights described in any said notice, to be published as aforesaid, within eighteen months after the first publication by them of said notice of application provided for in section seven hundred and fifty of this part of this article, any person interested, upon at least eight days' notice in writing to said board of commissioners, may make application to said court for an order discontinuing all proceedings taken by said board of commissioners to acquire by eminent domain the said land or lands, right or rights in which he may be interested, and the court, in its discretion, may grant or refuse such application and may, in the order made thereon, award costs to either party. Provided, however, that such board of commissioners shall have the right at any stage of the proceedings to discontinue the proceeding by an order of the court fixing fees, costs and disbursements to be allowed to landowners as hereinbefore provided.

§761. Acquisition of lands by entry and appropriation. In addition to the various methods of acquiring lands provided for in this part of this article, the commissioners of the Palisades interstate park shall have the power to acquire lands by entry and appropriation in the manner provided for in section fifty-nine of the conservation law.

* * * * *

§50. The following laws are hereby repealed together with any laws amendatory thereof or supplemental thereto:

Article four-a of the conservation law, as added by chapter one hundred and eighty-nine of the laws of nineteen hundred and twenty-four; article nine of the public lands law; chapter four hundred and sixty-eight of the laws of nineteen hundred and twenty-one; chapter three hundred and twenty-five of the laws of nineteen hundred and twenty-six; article ten of the public lands law, as added by chapter eighty-eight of the laws of nineteen hundred and twenty-four; article fifteen of the public lands law, as added by chapter one hundred and ninety-eight of the laws of nineteen hundred and twenty-five; article sixteen of the public lands law, as added by chapter one hundred and ninety-eight of the laws of nineteen hundred and twenty-five; chapter one hundred and seventy of the laws of nineteen hundred; chapter five hundred and four of the laws of nineteen hundred and one; chapter one hundred and twelve of the laws of nineteen hundred and twenty-four; chapter three hundred and eight of the laws of nineteen hundred and sixteen; chapter seven hundred and sixteen of the laws of nineteen hundred and thirteen; chapter four hundred and nineteen of the laws of nineteen hundred; chapter one hundred and fifty-one of the laws of nineteen hundred and ten; chapter six hundred and fifty-three of the laws of nineteen hundred and four; chapter two hundred and twenty-two of the laws of nineteen hundred and twenty-four; chapter five of the laws of eighteen hundred and eighty-nine; article eight of the public buildings law as added by chapter six hundred and sixty-two of the laws of nineteen hundred and twenty-one; article seven of the public buildings law, as added by chapter one hundred and ninety-eight of the laws of nineteen hundred and eighteen * * *

§51. This act shall take effect immediately.

BOND REFERENDUM ACT.

Laws of 1924, Chapter 602.

AN ACT making provision for issuing bonds to the amount of not to exceed fifteen million dollars for the extension and improvement of existing state parks and the establishment of new state parks and parkways in order to create a comprehensive and unified state park system for the promotion of the recreation, instruction and health of the people, and providing for a submission of the same to the people to be voted upon at the general election to be held in the year nineteen hundred and twenty-four.

Became a law May 2, 1924, with the approval of the Governor. Passed, three-fifths being present.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

SECTION 1. There shall be issued, in the manner and at the times hereinafter recited, bonds of the state in an amount not to exceed fifteen million dollars, which bonds shall be sold by the state and the proceeds thereof paid into the state treasury, and so much thereof as may be necessarily expended for the development, improvement and extension of state parks within the state of New York, including the acquisition of lands, and for the establishment of a unified state park system as hereinafter provided. Such bonds when issued shall be exempt from taxation.

§2. The comptroller is hereby directed to cause to be prepared the bonds of the state to an amount not to exceed fifteen million dollars ($15,000,000), such bonds to bear interest at the rate of not in excess of five per centum per annum, which interest shall be payable semi-annually in the city of New York. Such bonds, or such

portion thereof as may be issued, shall be serial bonds payable in equal annual instalments, the first of which shall be payable one year after the date of issue and the last of which shall be payable at such time as may be hereafter prescribed by law, but not more than fifty years after the debt or fraction thereof shall have been contracted. Such bonds shall be sold for not less than par. The comptroller is hereby charged with the duty of selling such bonds to the highest bidder after advertising for a period of twenty consecutive days, Sundays excepted, in at least two daily newspapers printed in the city of New York and one in the city of Albany. Advertisements shall contain a provision to the effect that the comptroller, in his discretion, may reject any or all bids made in pursuance of such advertisements, and, in the event of such rejection, the comptroller is authorized to readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a satisfactory sale. Said bonds shall be sold in such lots and at such times as may be required for the purpose of making partial or final payments in accordance with the provisions of this act. The principal and interest on such bonds as the same accrue shall be paid out of appropriations made therefor pursuant to law.

§3. The proceeds of such bonds, after appropriation or appropriations therefrom by the legislature, shall be applicable to the development, improvement and extension of state parks within the state of New York, including the acquisition of lands or waters or both for the extension or establishment thereof, and for surveys, examination of titles and other necessary expenses incidental to the acquisition of such lands, as follows, provided that no part of the sum set aside for the state forest preserve shall be used for any other purpose than

for the acquisition of lands within the forest preserve counties, which lands if now owned by the state under existing law, would be part of the forest preserve.

For the state forest preserve	$5,000,000
For the Palisades Interstate park	3,500,000
For the Allegany state park	2,000,000
For the New York state reservation at Niagara	1,000,000
For the Letchworth park	500,000
For the parks and parkways in the Finger lake region	500,000
For parkway connections between the Bronx river parkway and the bridge from Peekskill to Bear Mountain, in Westchester county	1,000,000
For the development of a state park system on Long Island	1,000,000
For the development and extension of other state parks and the acquisition and development of additional parks, including the further development of the state reservation at Saratoga Springs, the Taconic Park and the park on the Tongue mountain peninsula at Lake George	500,000

§4. The moneys for the state forest preserve shall be expended and lands acquired under the direction of the conservation commissioner by and with the advice and consent of the commissioners of the land office. The moneys for the development, improvement and extension of the Palisades Interstate park shall be expended and the lands shall be acquired by the commissioners of the Palisades Interstate park under the provisions of chapter one hundred and seventy of the laws of nineteen hundred, as amended. The moneys for the extension and im-

provement of the Allegany state park shall be expended by the commissioners of the Allegany state park. The moneys for the extension and improvement of the New York state reservation at Niagara shall be expended by the commissioners of that reservation. The moneys for the Bronx parkway extensions and connections shall be expended by the Westchester county park commission as the agent of the state, or otherwise as the legislature may determine. The moneys for the Long Island park system shall be expended by a commission constituted by the legislature, to be known as the Long Island state park commission. The moneys for the extension and improvement of the Letchworth park shall be expended by the American Scenic and Historic Preservation Society. The moneys for the extension and improvement of state parks in the Finger lake region shall be expended by a commission to be constituted as the legislature may determine. The remaining moneys for other park extensions and for new parks, including the further development of the state reservation at Saratoga Springs and Lake George park, shall be expended under the direction of the conservation commission, or otherwise as the legislature may determine. The legislature may at any time hereafter provide that the moneys as to which it is hereinbefore provided that the expenditure shall be made under the direction of the respective commissioners, commissions or societies in this section specified, may be expended by any other state department, board, commissioners, commission or officer that it may designate. Except as in this section otherwise provided such lands may be acquired in such manner as the legislature may provide, which may be either by purchase, by condemnation or by entry and appropriation with submission to the court of claims or supreme court for the determination and award of damages for such entry and appropriation, or by one or more of such methods as the legislature may provide.

§5. The moneys appropriated for the acquisition of lands under this act shall be available for the payment of the purchase price where lands are acquired by contract or for payments of judgments and awards in case of purchase by condemnation. Moneys appropriated for the acquisition of forest preserve lands, and of lands in the Allegany state park shall also be available for the payment of judgments and awards in case of proceedings by entry and appropriation.

§6. The term "lands" as used in this act includes the improvements thereon. All lands acquired under the state park system contemplated by this act shall be for the use of all the people.

§7. This law shall not take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and the same shall be submitted to the people of this state at the general election to be held in November, nineteen hundred and twenty-four. The ballots to be furnished for the use of the voters upon the submission of this law shall be in the form prescribed by the election law and the proposition or question to be submitted shall be printed thereon in substantially the following form, namely: "Shall chapter (here insert the number of the chapter) of the laws of nineteen hundred and twenty-four, entitled 'An act making provision for issuing bonds to the amount of not to exceed fifteen million dollars for the extension and improvement of existing state parks and the establishment of new state parks and parkways in order to create a comprehensive and unified state park system for the promotion of the recreation, instruction and health of the people, and providing for a submission of the same to the people to be voted upon at the general election to be held in the year nineteen hundred and twenty-four,' be approved?"

APPROPRIATION ACT OF 1926.

Laws of 1926, Chapter 16.

AN ACT making appropriation for the extension and improvement of existing state parks and the establishment of new state parks and parkways in order to create a comprehensive and unified state park system for the promotion of the recreation, instruction and health of the people, to carry out the provisions of chapter six hundred and two of the laws of nineteen hundred and twenty-four.

Became a law February 24, 1926, with the approval of the Governor. Passed, three-fifths being present.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

SECTION 1. There is hereby appropriated out of moneys realized from the sale of bonds issued in pursuance of the provisions of chapter six hundred and two of the laws of nineteen hundred and twenty-four, the following sums for the following parks, parkways and parkway connections:

(1) For the acquisition of lands for state park purposes within the forest preserve counties, within or without the limits of the Adirondack and Catskill parks, which lands if owned by the state on the fourth day of November nineteen hundred and twenty-four, under the existing law would be part of the forest preserve, the sum of five million dollars ($5,000,000).

(2) For the Palisades Interstate park, the sum of three million five hundred thousand dollars ($3,500,000), which sum shall be available for the acquisition of lands for the extension of such park, and for the development

and improvement of such park as now existing or as so extended, or for both.

(3) For the Allegany state park, the sum of two million dollars ($2,000,000), which sum shall be available for the acquisition of lands for the extension of such park and for the development and improvement of such park as now existing or as so extended, or for both.

(4) For the New York state reservation at Niagara, the sum of one million dollars ($1,000,000), which sum shall be available for the acquisition of lands for the extension of such reservation, and for the development and improvement of such reservation as now existing or as so extended, or for both.

(5) For the Letchworth park the sum of five hundred thousand dollars ($500,000), which sum shall be available for the acquisition of lands for the extension of such park, and for the development and improvement of such park as now existing or as so extended, or for both.

(6) For parks and parkways in the Finger Lakes region the sum of five hundred thousand dollars ($500,000), which sum shall be available for the acquisition of lands for the extension and establishment of such parks and parkways, and for the development and improvement of such parks and parkways as now existing or as so extended or established, or for both.

(7) For parkway connections between the Bronx river parkway and the bridge from Peekskill to Bear mountain in Westchester county the sum of one million dollars ($1,000,000), which sum shall be available for the acquisition of lands for such parkway connections, and for the development and improvement of such parkway

connections as now existing or as so extended, or for both.

(8) For the development of a state park and parkway system on Long Island, the sum of one million dollars ($1,000,000), which sum shall be available for the acquisition of lands for the extension and establishment of such parks and parkways, and for the development and improvement of such parks and parkways, as now existing or as so extended or established, or for both.

(9) For the state reservation at Saratoga Springs the sum of one hundred thousand dollars ($100,000), which sum shall be available for the acquisition of lands for the extension of such reservation.

(10) For parks and parkways in the Taconic region, being the territory embracing the counties specified in subdivision one, section one hundred and fifty-two of the public lands law, the sum of one hundred twenty-five thousand dollars ($125,000), which sum shall be available for the acquisition of lands for the extension and establishment of such parks and parkways, and for the development and improvement of such parks and parkways as now existing or as so extended or established, or for both.

(11) For the John Boyd Thacher park the sum of thirty thousand dollars ($30,000), which sum shall be available for the acquisition of lands for the extension of such park, and for the development and improvement of such park as now existing or as so extended, or for both.

(12) For the Saint Lawrence reservation the sum of fifteen thousand dollars ($15,000), which sum shall be available for the acquisition of lands for the extension

of such reservation, and for the development and improvement of such reservation as now existing or as so extended, or for both.

(13) For parks and parkways in the central New York region, being the territory embracing the counties specified in subdivision one, section one hundred and forty-two of the public lands law, the sum of one hundred twenty-five thousand dollars ($125,000), which sum shall be available for the acquisition of lands for the extension and establishment of such parks and parkways and for the development and improvement of such parks and parkways as now existing or as so extended or established, or for both.

(14) For a state park at Fairhaven, on Lake Ontario, the sum of fifty thousand dollars ($50,000), which sum shall be available for the acquisition of lands for the establishment of such park.

(15) For other state parks and parkways, including Lake George battlefield and a park on the Tongue mountain peninsula at Lake George, the sum of fifty-five thousand dollars ($55,000), which sum shall be available for the acquisition of lands for the extension and establishment of such parks and parkways, and for the development and improvement of such parks or parkways as now existing or as so established and extended, or for both, which sum shall be allocated by the state council of parks.

§2. (1) The moneys for the state forest preserve shall be expended and lands acquired under the direction of the conservation commissioner.

(2) The moneys for the development, improvement and extension of the Palisades Interstate park shall be expended and the lands shall be acquired by the commis-

sioners of the Palisades Interstate park under the provisions of chapter one hundred and seventy of the laws of nineteen hundred, as amended.

(3) The moneys for the development, improvement and extension of the Allegany state park shall be expended and the lands shall be acquired by the commissioners of the Allegany state park.

(4) The moneys for the development, improvement and extension of the New York state reservation at Niagara shall be expended and the lands shall be acquired by the commissioners of that reservation. Of such moneys there may be available for the acquisition of land to extend the reservation south along the Niagara frontier in Erie county such sum as the commissioners of the New York state reservation at Niagara in their discretion may allot. Such acquisition may be by the Erie county park commission as the agent of the state, subject to the approval of the commissioners of the New York state reservation at Niagara. Lands to extend the reservation in Erie county shall be acquired in the manner provided by statute for the acquisition of lands by the Erie county park commission, but such lands, when acquired, shall be the property of the state.

(5) The moneys for the development, improvement and extension of and acquisition of lands for the Letchworth park shall be expended by the American Scenic and Historic Preservation Society.

(6) The moneys for the development, improvement, extension and establishment of state parks and parkways in the Finger lakes region and for a state park at Fairhaven, on Lake Ontario, shall be expended and the lands shall be acquired by the Finger lakes state parks commission.

(7) The moneys for the Bronx parkway extension and connections shall be expended and the lands shall be acquired by the Westchester county park commission as the agent for the state. Lands for such parkway extensions and connections shall be acquired in the manner provided by statute for the acquisition of lands by the Westchester county park commission, but such lands, when acquired, and such improvements shall be the property of the state.

(8) The moneys for the establishment, extension, development and improvement of a state park and parkway system on Long Island shall be expended and the lands shall be acquired by the Long Island state park commission.

(9) Moneys for the extension of the state reservation at Saratoga Springs shall be expended and the lands shall be acquired by the conservation commission in the manner provided in this act, notwithstanding any other statute.

(10) Moneys for the development, improvement, extension and establishment of state parks and parkways in the Taconic region shall be expended and the lands shall be acquired by the Taconic state park commission.

(11) Moneys for development, improvement and extension of and for the acquisition of lands for the John Boyd Thacher park shall be expended by the American Scenic and Historic Preservation Society.

(12) Moneys for the extension, development and improvement of the Saint Lawrence reservation shall be expended and the lands acquired by the conservation commission.

(13) Moneys for the development, improvement, extension and establishment of parks and parkways in the

central New York region shall be expended and the lands shall be acquired by the central New York state parks commission.

(14) Moneys for the development, improvement, extension and establishment of other state parks and parkways shall be expended and the lands acquired by the commission or other body or officer having jurisdiction over the county in which such lands are located as prescribed by chapter one hundred ninety-eight of the laws of nineteen hundred and twenty-five.

§3. Lands for the Allegany state park; for the New York state reservation at Niagara; for the Letchworth park; for the state parks and parkways in the Finger Lakes region; for the state parks and parkways on Long Island; for the state reservation at Saratoga Springs; for the Taconic state park; for the John Boyd Thacher park; for the Saint Lawrence reservation; for the state parks and parkways in the central New York region; for a state park at Fairhaven on Lake Ontario; and for other state parks for the acquisition of which special provision is not hereinbefore made, shall be acquired by the commission or other body authorized to acquire the same, except any park as to which a county park commission acts as agent of the state, by purchase, or by condemnation in the manner provided by chapter nine hundred and twenty-three of the laws of nineteen hundred and twenty, known as the condemnation law, and amendments thereto, or by the appropriation of such lands in the manner provided by section fifty-nine of the conservation law for the appropriation of certain park lands. In all cases of entry and appropriation, the governor, before giving his approval, shall satisfy himself that there is available a sum representing fair compensation for the land to be entered and appropriated, and such sum shall be set aside to meet the judgment of the

(7) The moneys for the Bronx parkway extension and connections shall be expended and the lands shall be acquired by the Westchester county park commission as the agent for the state. Lands for such parkway extensions and connections shall be acquired in the manner provided by statute for the acquisition of lands by the Westchester county park commission, but such lands, when acquired, and such improvements shall be the property of the state.

(8) The moneys for the establishment, extension, development and improvement of a state park and parkway system on Long Island shall be expended and the lands shall be acquired by the Long Island state park commission.

(9) Moneys for the extension of the state reservation at Saratoga Springs shall be expended and the lands shall be acquired by the conservation commission in the manner provided in this act, notwithstanding any other statute.

(10) Moneys for the development, improvement, extension and establishment of state parks and parkways in the Taconic region shall be expended and the lands shall be acquired by the Taconic state park commission.

(11) Moneys for development, improvement and extension of and for the acquisition of lands for the John Boyd Thacher park shall be expended by the American Scenic and Historic Preservation Society.

(12) Moneys for the extension, development and improvement of the Saint Lawrence reservation shall be expended and the lands acquired by the conservation commission.

(13) Moneys for the development, improvement, extension and establishment of parks and parkways in the

central New York region shall be expended and the lands shall be acquired by the central New York state parks commission.

(14) Moneys for the development, improvement, extension and establishment of other state parks and parkways shall be expended and the lands acquired by the commission or other body or officer having jurisdiction over the county in which such lands are located as prescribed by chapter one hundred ninety-eight of the laws of nineteen hundred and twenty-five.

§3. Lands for the Allegany state park; for the New York state reservation at Niagara; for the Letchworth park; for the state parks and parkways in the Finger Lakes region; for the state parks and parkways on Long Island; for the state reservation at Saratoga Springs; for the Taconic state park; for the John Boyd Thacher park; for the Saint Lawrence reservation; for the state parks and parkways in the central New York region; for a state park at Fairhaven on Lake Ontario; and for other state parks for the acquisition of which special provision is not hereinbefore made, shall be acquired by the commission or other body authorized to acquire the same, except any park as to which a county park commission acts as agent of the state, by purchase, or by condemnation in the manner provided by chapter nine hundred and twenty-three of the laws of nineteen hundred and twenty, known as the condemnation law, and amendments thereto, or by the appropriation of such lands in the manner provided by section fifty-nine of the conservation law for the appropriation of certain park lands. In all cases of entry and appropriation, the governor, before giving his approval, shall satisfy himself that there is available a sum representing fair compensation for the land to be entered and appropriated, and such sum shall be set aside to meet the judgment of the

court of claims or other court on appeal, if any, or to meet any intermediate agreement as to compensation.

Lands for the state forest preserve shall be acquired in the manner or method herein provided, by and with the advice and consent of the commissioners of the land office, if any, without other approval. Any such consent shall be by resolution and a certified copy thereof shall be filed in the office of the secretary of state.

§4. The commission or other body or officer which directs the expenditure of moneys for the acquisition of lands and for developments and improvements under its jurisdiction, excepting, however, the conservation commissioner in the acquisition of lands for state park purposes within the forest preserve counties, and the conservation commission in the acquisition of lands for the state reservation at Saratoga Springs or the acquisition of lands for the Saint Lawrence reservation and the development of such reservation, shall present to the state council of parks a map or maps for land acquisition showing the location and extent of each park or parkway proposed to be acquired, together with estimates of the cost of such acquisition, development or improvement, and shall also report, from time to time, any proposed modifications of such maps and estimates. It shall be the duty of the council to pass upon such maps, estimates and modifications and to submit them for approval to the governor, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. No commission or other body or officer authorized to direct the expenditure of moneys for the acquisition of lands or for developments or improvements, excepting the conservation commissioner in the acquisition of lands for state park purposes within the forest preserve counties, and the conservation commission in the acquisition of lands for the state reservation at Saratoga

Springs or the acquisition of lands for the Saint Lawrence reservation and the development of such reservation, shall obligate itself for the expenditure of or expend moneys hereby appropriated for land acquisition, developments or improvements until its maps and estimates therefor shall have been passed upon by the state council of parks and until such maps and estimates shall have been submitted to the governor, the chairman of the senate finance committee and the chairman of the assembly ways and means committee in such detail as they shall require and shall have been approved by them. The conservation commission shall not obligate itself for the expenditure of or expend moneys hereby appropriated for lands for the state reservation at Saratoga Springs or for the Saint Lawrence reservation and the development of such reservation until its maps and estimates therefor shall have been approved by the governor, the chairman of the senate finance committee and the chairman of the assembly ways and means committee as aforesaid.

§5. The moneys appropriated for the acquisition of lands under this act shall be available for the payment of the purchase price where lands are acquired by purchase or for payments of judgments and awards in case of acquisition by condemnation or by entry and appropriation. Where money is appropriated by this act for the acquisition of lands, so much as may be necessary may be used for the purpose of making surveys, examinations of title and other necessary expenses incidental to the acquisition of such lands. All examinations of title under this act shall be made under the supervision and subject to the approval of the attorney-general. The attorney-general shall conduct, in the name of the people of the state of New York, all proceedings authorized by this act to be taken for the condemnation or appropriation of lands, except proceedings to acquire lands for the

Palisades Interstate park, subject, however, to the power of the commission or other body authorized to make such appropriation of lands, to make, file and serve descriptions, certificates and notices as provided by section fifty-nine of the conservation law.

Any lands to be acquired as herein provided may be so acquired subject to such rights and easements as such commission or other body may determine.

§6. The term "lands" as used in this act includes the improvements thereon. All lands acquired under the state park system contemplated by this act shall be for the use of all the people and title thereto shall be taken in the name of the people of the state of New York, except that title to lands acquired for the Palisades Interstate park may be taken as provided by chapter one hundred and seventy of the laws of nineteen hundred, as amended.

§7. The moneys hereby appropriated shall be paid out by the treasurer on the warrant of the comptroller after submission to him of vouchers therefor approved by the officer or the head or an authorized member of the commission or society authorized by this act to make such expenditures; except that moneys expended for the examination and approval of land titles, searches and the conduct of proceedings for the acquisition of property, shall be paid out on vouchers approved by the attorney-general. The comptroller is hereby authorized to charge respectively against the various funds appropriated herein for the several parks, parkways and reservations, and to reserve therefrom sums for the necessary expenses to be incurred by the attorney-general for searches, examination and approval of titles and the conduct of proceedings for the acquisition of property for each such park, upon the filing of a certificate or

certificates of the attorney-general from time to time setting forth such estimated expenses relative to each park approved by the officer, head or authorized member of the commission or society authorized by this act to make expenditures. The expenses of the attorney-general shall be paid from such reserved funds.

§8. The state council of parks with the approval of the governor, the chairman of the senate finance committee, and the chairman of the assembly ways and means committee, shall, from time to time, certify to the comptroller the amounts required by the several commissions and other bodies or officers authorized to expend moneys hereby appropriated, specifying in such certificates the probable life of the work or object for which the bonds authorized by chapter six hundred and two of the laws of nineteen hundred and twenty-four are to be issued, as such probable life is determined by section fifty-one of the state finance law as added by chapter twenty-three of the laws of nineteen hundred and twenty-four, and amendments thereto. Provided, however, that as to amounts required by the conservation commissioner in the acquisition of lands for state park purposes within the forest preserve counties, such certification shall be made by the conservation commissioner and as to amounts required by the conservation commission in the acquisition of lands for the state reservation at Saratoga Springs or the acquisition of lands for the Saint Lawrence reservation and the development of such reservation, such certification shall be made by the conservation commissioner with the approval of the governor, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. The moneys hereby appropriated shall not be available until such certifications shall have been made and such moneys shall not be available in excess of the amounts so certified.

The comptroller is also hereby authorized to apportion the expense of preparing and selling such bonds against the various appropriations and to use such apportioned fund in paying such expense.

§9. This act shall take effect immediately.

APPROPRIATION ACT OF 1928.

Laws of 1928, Chapter 75.

AN ACT making appropriations for the support of government. Became a law February 17, 1928, with the approval of the Governor. Passed, by a two-thirds vote.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

* * * * *

PART V.[1]

SECTION 5. The following sums, or so much thereof as may be necessary, being the unexpended balances of former appropriations, are hereby reappropriated and made immediately available for the same purposes as the former appropriations.

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PALISADES INTERSTATE PARK FUND.[2]

By chapter 199 of the laws of 1926 (re. $3,899.28).

STATE INSTITUTIONS BUILDING FUND.

By chapter 199 of the laws of 1926 (re. $443,781.73).

By chapter 769 of the laws of 1926; provided, however, that the amount of the item of $90,000 for Rochester State Hospital, Lakeside dormitory, contained in such chapter shall be available instead for Rochester state hospital, additional accommodations for patients (re. $11,956,420.08).

STATE PARK SYSTEM FUND.

By chapter 16 of the laws of 1926 (re. $11,912,850.58).

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[1] N. Y. Laws, 1928, p. 214.

[2] N. Y. Laws, 1928, p. 224.

GENERAL CONSTRUCTION LAW.

Chapter 27, Laws of 1909.

§80. *References to repealed provisions.* If any provision of a law be repealed and, in substance, reenacted, a reference in any law to such repealed provision shall be deemed a reference to such re-enacted provision.

§95. *Effect of the Repeal of a Statute by Another Statute Substantially Re-enacting the Former.* The provisions of a law repealing a prior law, which are substantial re-enactments of provisions of the prior law, shall be construed as a continuation of such provisions of such prior law, modified or amended according to the language employed, and not as new enactments.

COURT OF CLAIMS ACT.

Laws of 1920, Chapter 922.

AN ACT in relation to the court of claims and the jurisdiction, practice and procedure therein.

Became a law May 21, 1920, with the approval of the Governor. Passed, three-fifths being present.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known as the "Court of Claims Act."

§2. Organization of court of claims. The court of claims is hereby continued. Such court shall consist of three judges, to be known as judges of the court of claims, who shall be appointed by the governor, by and with the advice and consent of the senate. The term of office of each judge shall be nine years. Whenever the term of office of a judge shall expire, or his office become vacant from any cause, his successor shall be appointed for the unexpired term. Notwithstanding the provisions of section five of the public officers law, a judge of the court of claims shall hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been chosen, until his successor shall be chosen and qualified, but after the expiration of such term the office shall be deemed vacant for the purpose of choosing his successor. By an order to be filed in the office of the secretary of state, the governor shall designate one of the judges as presiding judge, who shall act as such during his term, and thereafter upon the appointment of his successor, the governor shall designate such successor or any other judge of the court as presiding judge, who shall act as such during his term. A

judge of the court of claims, must be an attorney and counselor-at-law admitted to practice in the courts of this state, of at least ten years' experience in practice. The judges of the court of claims shall have jurisdiction to hear and determine all matters now pending in the court of claims. Whenever in this act or in any other statute reference is made to the board of claims or any officer thereof, the same shall be deemed to refer to and mean the court of claims or an officer thereof. A determination of the board of claims, heretofore rendered shall have the same force and effect and be subjected to the same procedure as provided in article two for a judgment (Amended by L., 1924, ch. 121, in effect April 12, 1924.)

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§10. Record of proceedings and report to legislature. The court shall keep a record of its proceedings, and, at the commencement of each session of the legislature, and at such other times during the session as it may deem proper, or as the senate or assembly may request, report to the legislature the claims upon which it has finally acted, with a statement of the judgment rendered in each case.

§11. Annual report to comptroller. On the first day of January in each year, the clerk shall report, to the comptroller, under oath, a detailed statement of his disbursements made under the direction of the court from its contingent fund during the preceding year.

§12. Jurisdiction of court. The court of claims possesses all of the powers and jurisdiction of the former board of claims. It also has jurisdiction to hear and determine a private claim against the state, including a claim of an executor or administrator of a decedent who left him or her surviving a husband, wife or next of kin, for damages for a wrongful act, neglect or default, on the

part of the state by which the decedent's death was caused, which shall have accrued within two years before the filing of such claim and the state hereby consents, in all such claims, to have its liability determined. It may also hear and determine any claim on the part of the state against the claimant, or against his assignor at the time of the assignment, and must render judgment for such sum as should be paid by or to the state. But the court has no jurisdiction of a claim submitted by law to any other tribunal or officer for audit or determination except where the claim is founded upon express contract and such claim, or some part thereof, has been rejected by such tribunal or officer. Nothing in this act contained shall be construed to allow the court to hear any claim which as between citizens of the state would be barred by lapse of time or of any claim heretofore accrued and of which the said court or board has had jurisdiction and which was barred by lapse of time at the date when this section, as amended, takes effect. Provided further, that the court shall have jurisdiction, and may hear and determine all claims accrued and actually filed at any time prior to September first, nineteen hundred and twelve, and filed within two years from the time they accrued, though no notice of intention to file was given, as required by this section, if such claims when filed were not barred by lapse of time and the court or board had jurisdiction and authority to hear and determine the same except for the lack of such notice; and such jurisdiction shall attach without refiling or previous notice.

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§14. Court rules and procedure. The court may establish rules for its government, and the regulation of practice therein; prescribe the forms and methods of procedure before it, vacate or modify judgments, and grant new trials, and except as otherwise provided in said rules

and regulations, or the civil practice act, the practice shall be the same as in the supreme court. Rules of the board of claims or former court of claims, now in force, shall continue to be the rules of the court of claims until changed by such court.

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§17. State to be represented by the attorney-general. The attorney-general shall represent the state in all proceedings relating to claims. The attorney-general may designate a clerk in his office to assist in the preparation of cases for trial and to attend a term of the court.

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§25. Judgments. 1. The determination of the court upon a claim shall be by a judgment to be entered in a book to be kept by the clerk for that purpose, and signed and certified by him.

2. Within ten days after the entry of the judgment, the clerk shall serve a certified copy thereof on the claimant or his attorney and also upon the attorney-general.

3. If the claim arises in a case where the state seeks to appropriate or has appropriated land for a public use, the judgment shall contain a description of such land.

4. A transcript of a judgment in favor of the state, certified by the clerk of the court, may be filed and docketed in the clerk's office of any county; and upon being so docketed shall become and be a lien upon the property of the claimant in that county, to the same extent and enforceable by execution in the same manner, as a judgment of the supreme court.

5. A final judgment against the claimant on any claim prosecuted as provided in this article shall forever bar any further claim or demand against the state arising out of the matters involved in the controversy.

6. Interest shall be allowed on each judgment of the court of claims from the date thereof until the twentieth day after the comptroller is authorized to issue his warrant for the payment thereof or until payment, if payment be made sooner.

7. But no such judgment shall be paid until there shall be filed with the comptroller a copy thereof duly certified by the clerk of the court of claims together with a certificate of the attorney-general that no appeal from such judgment has been or will be taken by the state, and a release and waiver by the attorney for the claimant of any lien for services upon said claimant's cause of action, claim, award, verdict, report, decision or judgment in favor of said claimant, which said attorney may have thereon under and by virtue of section four hundred and seventy-five of the judiciary law; and where damages are awarded for the permanent appropriation of land for a public use, there shall also be filed with the comptroller, a satisfactory abstract of title and certificate of search as to incumbrances, showing the person demanding such damages to be legally entitled thereto.

8. The provisions of this section as to limitation of interest shall not apply, however, to judgments paid from the various trust funds or sinking funds of the state, which funds shall be entitled to interest until the twentieth day after an appropriation is available for the reimbursement thereof or until payment, if payment be sooner made.

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§28. Deposit of awards for land. If at the time of the appropriation thereof there was any apparent lien or incumbrance on the property appropriated by the state, or on any interest therein, or any dower or other interest which the court for any reason is unable to determine, unless the owners of such lien or incumbrance or such dower or other interest shall consent that their respective interests may be determined by the court of claims, the court shall, and in any other case as justice requires may, in and by its award and judgment direct the comptroller to deposit the amount awarded as compensation for the property appropriated in any bank in which moneys belonging to the fund from which such compensation is payable may be deposited, to the account of such award to be paid and distributed to the persons entitled to the same as ordered by the supreme court on application of any person interested in such award. (Added by L., 1923, ch. 671, in effect May 23, 1923, repealing former §28.)

§28-a. Disposition of amount of award deposited. If the amount awarded is deposited, as provided by section twenty-eight of this act, any person claiming an interest in the fund may apply to the supreme court in and for the county of Albany, for an order of distribution. Such application shall be made by verified petition setting forth the rights of any and all persons who may have, or claim to have, any interest in or lien or encumbrance on, the property so appropriated and the award therefor, and the names and addresses of such persons, if known. Thereupon, such court shall make an order, describing the property so appropriated, directed to the attorney-general of the state of New York and to all such persons and to any others who may be unknown, who have or claim to have, any right, title, interest, claim or demand in or to said appropriated property or said award, requiring them to appear before such court and to present

their claims or demands on account of such appropriation, at a time and place stated in the order, in the city of Albany, not less than thirty days after service of such order, and show cause why a final order of distribution should not be made. If any such persons appear by such petition to be residents of the state of New York, the order shall require personal service of the order thereon. If the petition states that any are non-residents of the state or that the names or addresses of any are unknown, the order shall require the service of the order by publication as provided by section twenty of this act. The court may on the return day hear all persons interested and make a final order of distribution or refer any claim to a referee to hear, try and report. The court may likewise on the confirmation of a report of a referee, after eight days' notice to those who appeared on the return day, make a final order of distribution. The determination of the court and final order of distribution shall, unless set aside or reversed on appeal, be final and conclusive upon the owners or other persons claiming any interest in or lien or encumbrance on the property so appropriated and the award therefor. (Added by L., 1921, ch. 474; amended by L., 1923, ch. 671, in effect May 23, 1923.)

§29. **Appeals generally.** Either party may appeal from an order or judgment of the court of claims to the appellate division of the supreme court of the third department, except that appeals from orders or judgments relating to claims which arose in the fourth department shall be taken to the appellate division of such fourth department. The appeal from a judgment may be taken upon questions of law or of fact, or both, or for an alleged excess or insufficiency of the judgment. Upon such appeal, the court may affirm, reverse, or modify the judgment, or dismiss the appeal, or grant a new trial. The provisions of the civil practice act relating to appeals in

the supreme court apply, so far as practicable, to appeals from orders or judgments of the court of claims, except as modified in this chapter.

STATE FINANCE LAW.

Section 49-b, formerly Section 51*.

§49-b. Probable life of certain works or objects of state debt. In compliance with section four of article seven of the state constitution, it is hereby determined that the probable life of each of the following described types of buildings, structures, acquisitions or improvements, as a work or object, or part of a work or object, for which a state debt shall be contracted pursuant to such section of the constitution, is as follows:

* * * * *

PARK IMPROVEMENT AND DEVELOPMENT.

11. Twenty-five years. Park Improvement and development, including forestry work, fire protection, planting, grading and park equipment.

* * * * *

OTHER IMPROVEMENTS.

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Except as may be otherwise provided by law, from time to time, the probable life of any work and construction not covered by the foregoing provisions, and of the acquisition of lands, is hereby determined to be fifty years.

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*N. Y. L., 1924, ch. 23, as amended by L., 1925, ch. 513.